

COUNSEL LISTED ON SIGNATURE PAGE

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

IN RE ABBOTT LABORATORIES NORVIR ) ANTITRUST LITIGATION )	<b>Case No. 04-1511 CW</b>
	<b>STIPULATION AND <del>[PROPOSED]</del></b>
	<b>ORDER REGARDING PRE-TRIAL</b>
	<b>SUBMISSIONS AND DEADLINES</b>
	Pre-trial Conference: August 5, 2008
	Time: 2:00 p.m.
	Courtroom 2, 4th Floor
	Judge: Honorable Claudia Wilken

WHEREAS the pre-trial conference in this action is presently set for August 5, 2008;

WHEREAS, the trial of this action is currently scheduled to begin on August 18, 2008;

WHEREAS, the parties have met and conferred regarding various scheduling issues presented by the current trial date and the pre-trial conference;

WHEREAS, the Court's Order for Pre-trial Preparation requires that counsel exchange the material described in Northern District Civil Local Rule 16-10(b)(7), (8), (9) and (10), as well as the parties' motions *in limine* no less than 30 days prior to the pre-trial conference;

WHEREAS, in light of the unique circumstances in this case and the potential for compromise on many issues in order to streamline the process, the parties, through good faith

1 negotiations have reached agreements that implicate the Court's Standing Order for Pre-trial  
2 preparation;

3 IT IS HEREBY STIPULATED by and between the parties, through their counsel of record  
4 that:

5 1. On July 3, 2008, the following materials were exchanged:

- 6 • Trial Exhibit Lists (not actual documents)
- 7 • Witness Lists and a description of expected testimony
- 8 • Discovery designations, including depositions, interrogatories and requests for
- 9 admission
- 10 • Summaries of proposed motions in Limine
- 11 • Disclosure of all significant issues of disputed areas of the law

12 2. On July 8, 2008, the parties exchanged descriptions of any *Daubert* motions that they  
13 intend to file. Also, the parties met and conferred to discuss whether they can agree to stipulate to  
14 issues in an effort to avoid the motions *in limine* proposed. The parties discussed whether any  
15 additional motions *in limine* are necessary given the disclosures of July 3. Finally, the parties  
16 discussed preparation of the pre-trial conference statement and sharing the costs of technology for  
17 trial

18 3. On July 16, 2008, the parties will have a second meet and confer pursuant to the  
19 Court's Standing Order.

20 4. On July 22, 2008, the parties will file all motions *in limine* and all *Daubert* motions,  
21 contained within a single 25-page brief.

22 5. On July 25, 2008, the parties will file the following:

- 23 • Joint Pretrial Conference Statement
- 24 • Exhibit List and Objections
- 25 • Proposed Findings of Fact/Conclusions of Law
- 26 • Trial Briefs
- 27 • Use of Discovery Responses
- 28 • Witness List

6. On July 29, 2008, the parties will file any oppositions to motions *in limine* and oppositions to *Daubert* motions.

7. The pre-trial conference will remain set for August 5, 2008 and trial will remain set for August 18, 2008.

8. The parties agree that Miles White will not be called as a witness by either party.

9. The parties will exchange demonstratives to be used on opening arguments no earlier than August 8, 2008 and not later than three days before trial. The parties will ask the Court to resolve their dispute over the precise exchange date at the pre-trial conference on August 5, 2008.

10. The parties will exchange demonstrative exhibits to be used with witnesses on August 8, 2008 with the understanding that (a) the demonstratives may be subsequently revised to include formatting changes and to correct errors; (b) the parties can mutually agree to allow any subsequently-proposed demonstrative exhibit, and (c) absent agreement, but for good cause shown, either party may seek permission from the Court to use a later-exchanged demonstrative exhibit.

11. The parties will exchange demonstratives to be used in closing arguments two days prior to summation, provided that the parties can supplement or revise demonstratives for closing arguments based on any testimony or rulings that occur after the exchange.

12. "Demonstrative exhibits" under paragraphs 9 through 11 do not include documents on the parties' exhibit lists and blow-ups from portions of documents on those exhibit lists.

13. In order to confirm their mutual understanding of the Court's order on Abbott's patent immunity defense, the parties stipulate that the Court's recent summary judgment ruling eliminated Abbott's patent immunity defense for trial, including Abbott's argument that the '036 patent immunizes Abbott from antitrust liability. Thus, Abbott cannot assert an immunity defense at trial based on the argument that it has patents covering the Boosted Market. At the same time, however, Abbott reserves its right to assert (a) that its patents create the presumption of a valid business justification discussed in *Kodak* and (b) that its patents exclude any monetary damages entirely or at least for the time period before the Court's summary judgment ruling on the validity of the '403 and '157 patents. While they disagree with the substance of these two arguments, Plaintiffs

1 agree this stipulation and the Court's summary judgment ruling do not bar Abbott from raising those  
2 arguments at trial.

3  
4 Respectfully submitted,

5 Dated: July 16, 2008

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9 WINSTON & STRAWN LLP  
10 Counsel for Defendant

11 Dated: July 16, 2008

12 By: /s/ Christopher T. Heffelfinger

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20 Kellie Safar Lerner  
21 LABATON SUCHAROW LLP  
22 Co-Counsel for Plaintiffs

23 IT IS SO ORDERED.

24 Dated: July 23, 2008

25  
26 

27  
28 United States District Judge

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**GENERAL ORDER 45 ATTESTATION**

I, James F. Hurst, am the ECF User whose ID and password was used to file this STIPULATION REGARDING PRE-TRIAL SUBMISSIONS AND DEADLINES. In compliance with General Order 45, X.B., I hereby attest that Christopher T. Heffelfinger, counsel for Plaintiffs, concurred in this filing.

Dated: July 16, 2008

By: /s/ James F. Hurst  
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